

In re) Fair Hearing No. 15,229
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare denying the petitioner's application for emergency housing under the General Assistance program.

1. The petitioner and her husband are Social Security and SSI recipients who moved back to Vermont from Georgia on September 13, 1997. Their move was precipitated by a disagreement with the landlord over making repairs at the trailer park in which they lived and because of the petitioner's asthma which was exacerbated by the humid conditions.

2. The petitioner, who is thirty-two years old, and her husband, who is thirty-eight, receive Social Security and SSI benefits totalling \$849 per month. They have no dependent children. In the month of September, they spent their entire check on car repairs, gas, food, a share in a U-Haul, storage and dog food.

3. On September 23, 1997, they applied for assistance from the Department with housing because they were without funds and were living in their van with their dogs. (They arrived with five but now only have one.) At that time they

were denied because they showed no "catastrophic" need. They were referred to a homeless shelter in a nearby town but they did not want to go there because they knew from prior experience with the shelter that they would not take their dog. The petitioner also says she had no money to get to the shelter, although she did not inform the Department of that fact at the time she was denied.

4. On September 24, 1997, the petitioner's husband was sentenced to jail until November 12, 1997, based on a conviction which occurred before their move to Florida. Although the petitioner and her husband have relatives in the area, none of them would provide housing for her so she continued to live in her van which she parked behind a store. The petitioner's father gave her \$20 and she received some food from a food bank.

5. On or about October 1, 1997, the petitioner received one Social Security check and two SSI checks totalling \$849 which she cashed and used in large part to pay for repairs to her 1984 Dodge Caravan which she wanted to keep running well because she needed transportation to look for an apartment. Walking all but short distances is a problem for her because of her respiratory problems which require the use of a nebulizer several times a day.

6. By October 22, 1997, the petitioner decided that she needed a warmer place for sleeping than her van and rented a hotel room for \$163 per week. At the time of her

hearing on October 30, 1997, she had paid for one week and had paid \$90 toward the coming week's rent when she ran out of money. Her brother-in-law agreed to pay the balance of that week's rent and she will be able to remain at the hotel until November 5, 1997. The petitioner expected to get her government checks somewhere near the first of November, 1997 totalling \$849.

7. The petitioner has been looking for a permanent dwelling place in the town where the district office is located. A friend has accompanied her to look at apartments. She has found a place she believes is suitable but is uncertain as to the amount needed to move in. The rent is \$390 per month plus utilities. The petitioner wants to get whatever amount is needed to move in, including a security deposit or advance rent, from the General Assistance program.

8. The petitioner requested an expedited fair hearing after her denial on September 23, 1997 which was denied by the hearing officer based on the availability of housing in the shelter. At her hearing on October 30, 1997, she asked for immediate relief from the hearing officer which was also denied based on the merits of the case.

ORDER

The decision of the Department is affirmed.

REASONS

The GA regulations at W.A.M. § 2600 provide that GA shall be granted to "eligible individuals and families to meet emergency needs only". That same regulation defines disabled persons as eligible individuals if their income in the last 30 days is equal to or greater than the ANFC payment standard for that size household. W.A.M. § 2600(C)(1). As the maximum ANFC payment standard for two (\$532.41, see W.A.M. § 2240 et seq.) is considerably lower than the petitioner and her husband's income, the petitioner can only receive GA benefits if she presents a "catastrophic situation" as defined at W.A.M. § 2602:

Any applicant who has an emergency need attributable to one of the following catastrophic situations may have that need met within General Assistance benefit standards. Payment maximums as specified in sections 2611 through 2626 apply to these needs. Eligibility criteria are as follows:

- The income test at 2600 C.1 is not applicable.
- All available income and resources must be exhausted. The resource exclusion at 2600 C.5.b. does not apply if an individual qualifies only under catastrophic rules.
- Alternatives must be explored (for example, private and community resources, family, credit).

Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem.

- a. Death of a spouse or minor dependent child; or

- b. A court-ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant, other household members or their guests; repeated instances of raucous and illegal behavior which seriously infringed on the rights of the landlord or other tenants of the landlord; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his/her behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat, utilities, or water is not provided within a reasonable period of time and there is an agreement to furnish these items, but pursuit by the applicant of a legal resolution to these Vermont Health regulation offenses is expected.

- c. A natural disaster such as flood, fire or hurricane; or
- d. An emergency medical need. Actions which may be evaluated as emergency in nature include, but are not limited to, the following:
 - 1. Repair of accidental injury;
 - 2. Diagnosis and relief of acute pain;
 - 3. Institution of treatment of acute infection;
 - 4. Protection of public health; or
 - 5. Amelioration of illness, which if not immediately diagnosed and treated could lead to disability or death.

The petitioner and her husband were arguably in an "emergency" situation when they came to the Department on September 23, 1997, because they would have no more money

for at least a week and had no place to live besides their van. At that time, the Department determined that their situation was not "catastrophic" because they had an alternative to payment for temporary shelter by the Department in the form of a homeless shelter in a nearby town.

The petitioner does not dispute the availability of this temporary shelter but asserts rather that it was not available to her because she has a pet. However, the petitioner did not show that she explored a temporary caretaking situation for her pet with either a friend or a humane shelter while she was at the shelter. Even if she had made such a showing, it is doubtful that the Department has an obligation to pay for a hotel room so the petitioner can remain with her pet. The Department's obligation is to assist humans in need of shelter and it provided that assistance to the petitioner on September 23, 1997, when it referred her to the shelter. The Department may have had a further obligation to assist the petitioner in getting to that shelter but she did not express her need or request that assistance until the hearing. It cannot be said that its decision denying the petitioner GA at the time of application because of temporary housing available for her at a shelter was either contrary to regulations or "unconscionable as a matter of policy." See Fair Hearings No. 13,048 and 13,380.

The petitioner's claim for assistance weakened thereafter. Although she had over \$800 at the beginning of October, the petitioner did not make finding and paying for housing a priority at that time. Instead, she spent the money on the repair of her automobile. Her assertion that she needed the car to find housing is not tenable. She had someone assisting her in finding housing by her own admission and presented no evidence that there were no transportation alternatives available to her through friends, public means or the assistance of community action groups. Furthermore, at the time of hearing, the petitioner with the help of her family had paid for housing which would continue at least until the time she got her next government checks in November. The petitioner's "emergency need" had thus ended at that point and she should have soon had the financial ability to provide her own housing for the future.

For all of the above reasons, it must be concluded that the Department's decision to deny GA to the petitioner was not in error and should be affirmed. Fair Hearing Rule No. 17, 3 V.S.A. § 3091(d).

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